

State of Wisconsin\Government Accountability Board

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KEVIN J. KENNEDY
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DATE: August 26, 2010

TO: Wisconsin County Clerks
Wisconsin Municipal Clerks
City of Milwaukee Election Commission
Milwaukee County Election Commission

FROM: Nathaniel E. Robinson
Elections Division Administrator
Government Accountability Board

Michael Haas
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SUBJECT: Guidance Regarding Voter Data Requests

We have received a number of inquiries from clerks regarding a voter data request which has been submitted by the Republican Party of Wisconsin (RPW) to municipal clerks throughout the State. The request seeks the names and voter identification numbers of individuals who request absentee ballots, appear on a permanent absentee voter list, or have submitted an absentee ballot. The request also seeks regular updates of this information, suggesting that municipalities provide updated records on a weekly basis.

We have confirmed with RPW that they are seeking these records for absentee voters and ballots related to the November General Election, not the September Partisan Primary. To date, the only absentee ballots that may be received for the November election are the write-in absentee ballots sent to military and overseas voters, but municipalities also have permanent absentee lists and absentee ballot requests pertaining to the November election which should be provided in response to the request at this time.

Access to voter data is governed by Chapter 6 of the Wisconsin Statutes and GAB 3.50 of the Administrative Code, as well as by the Public Records Law, contained in Chapter 19 of the Statutes. This memorandum provides guidance for responding to RPW's specific request as well as to similar requests you may receive. We also encourage you to consult with your municipal attorney regarding circumstances that may be unique to your situation, such as the timeframe for responding to the request. A copy of this memorandum is also being provided to the Republican Party of Wisconsin.

In responding to the RPW request, please keep in mind the following:

1. The voter registration list, absentee ballot logs, and voter records are generally open to public inspection, pursuant to the Public Records Law and sections 6.36, 6.45 to 6.47, and 6.89 of

the Wisconsin Statutes. The exception to this rule is information deemed to be confidential by the Statutes, including date of birth, driver license number, social security number, indication of special accommodation at the polling place, and the names and addresses of victims of domestic abuse, sexual assault, or stalking. The SVRS voter identification number is no longer confidential under Wisconsin Statutes, and is subject to public inspection and release.

2. Section 19.35(4)(a) provides that responses to public records requests must be provided “as soon as practicable and without delay.” While many agencies consider ten working days to be a generally reasonable time to respond, neither the statutes nor case law establish a definite time limit. Court cases have held that a reasonable time for a response depends on the nature and extent of the request, the staff and other resources available to process the request, and related considerations, and that determining whether a public body acted with reasonable diligence to a particular request depends on the totality of the circumstances surrounding the request.
3. The Public Records Law does not require fulfilling a request on an ongoing basis. The Attorney General has concluded that the public’s right to inspect records applies only to those records which exist at the time the request is made. 73 Op. Att’y Gen. 37, 44 (1984). Neither the statutes nor the administrative rule governing access to the voter registration list creates an exception to this rule for voter records. A municipality is certainly free to honor the single request for updates, but is not required to do so, and it may require a new request for each new set of data. If a municipality chooses to fulfill the continuing request and the records are generated through SVRS, prepayment is required prior to providing the updated information, pursuant to GAB 3.50(3), Wis. Adm. Code. Updated reports generated through SVRS will include the entire set of absentee records, rather than only those which have been updated since the last response.
4. The form of the information that is provided will vary, as will the charges, depending upon whether the municipality uses SVRS to track absentee voting. If the municipality fulfills the request by providing a copy of an absentee log that is not generated by SVRS, the Public Records Law provides that copying fees are limited to the actual, necessary and direct cost of the reproduction, consistent with the fees the municipality charges for other public records. Prepayment may be required if the cost will exceed \$5. If the municipality fulfills the request by generating a report from SVRS, the fees are established by GAB 3.50, Wis. Adm. Code. The charge for paper copies of a report generated by SVRS is \$.25 per page plus the cost of postage and shipping. The charge for reports in electronic format is a \$25 base fee per report plus \$5 for each 1,000 voter records. Each new request, or each weekly update in the case of the RPW request, requires payment of the base fee plus the incremental charge, when the request is for records in electronic format.
5. We have been asked about municipalities that keep an absentee log which does not include the SVRS identification number. While the municipality is not required to create a new record combining voter names on an absentee log with the identification number, both pieces of information are public records which must be provided. Reliers who do not have access to SVRS can get the identification number from a recent poll book, or voter listing report from their provider. The identification number also should have been written on the voter registration form by the provider when the voter was added to SVRS. In many instances

where few records are involved, the most efficient option may be to simply add the identification number to the absentee log. Where numerous records are involved, the municipality may wish to consider creating a new record by generating an SVRS report. If this is done, the standard SVRS rates described in 4 above would be charged.

6. Finally, apparently there has been some miscommunication or confusion regarding G.A.B.'s participation in fulfilling voter data requests submitted to local municipalities, as a number of clerks have simply forwarded the RPW request to our office. While the G.A.B. responds to requests for SVRS reports that are filed directly with our office, it is the requestor's decision whether to make the request of our office or with the local records custodian. Municipalities receiving requests are responsible for fulfilling the request, and the G.A.B. is not assuming that role. If your municipality forwarded the RPW request to us by fax or email, please be aware that you must still respond to the request as the G.A.B. will not be doing so. The G.A.B. will certainly respond to any requests that are filed directly with our office.

In summary, while there are slight differences in the laws depending upon whether or not the voter data is generated from SVRS, a municipality should provide the information that is in its possession, and inform the RPW whether a new request will be required for updated reports, assessing the appropriate charges depending upon whether the records are generated from SVRS.

We encourage municipalities to work with requestors to satisfy the RPW request, as well as all other requests for voter data, in a timely and efficient manner based upon these guidelines and considering the other demands upon your staff. In addition, because any legal objection to the municipality's response to a public records request must be resolved at the local level, we also encourage you to consult with your municipal attorney.

Staff of the Government Accountability Board is available to assist with specific questions regarding voter data requests. If you have any questions regarding this information, please feel free to contact the G.A.B. Help Desk at 608-261-2028 or GABHelpDesk@wi.gov,